

**RECEIVED
CENTRAL FAX CENTER****AUG 08 2006**Attorney Docket No: 20341-67618
PATENT**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: James M. KAIN Confirmation No. 9889
Serial No.: 09/871,199 Art Unit: 3636
Filed: May 31, 2001 Examiner: Joseph F. Edell
For: JUVENILE SEAT ARMREST

APPEAL BRIEFMail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Barnes & Thornburg Customer No: 23643 U.S. Patent and Trademark Office

Sir:

Below is an appeal brief in support of an appeal taken from the final rejection of claims 4-9, 11-14 and 25-31, mailed May 18, 2006. A Notice of Appeal accompanies this appeal brief.

1. Real party in interest. All rights in this application have been assigned to Cosco Management, Inc., a corporation existing under the laws of the state of Delaware.
2. Related appeals and interferences. Appellant and undersigned counsel for appellant knows of no appeals or interferences related to the present application on appeal.
3. Status of Claims. The application contains Claims 4-9 and 11-31. Claims 15-24 are allowed. Claims 6-9, 11-12, 25 and 27-29 have been rejected over Lemmeyer et al. (U.S. Patent No. 6,478,372) in view of Marrujo (U.S. Patent No. D 254,889). Claims 11-12 and 27-29 have been rejected over Markel (U.S. Patent No. 5,316,373). Claims 13, 14 and 26 have been rejected over Lemmeyer et al. in view of Marrujo and Mitchell (U.S. Patent No. 207,764). Claims 4 and 31 have been rejected over Lemmeyer et al. in view of Marrujo and Deloustal (U.S. Patent No. 4,274,674). Claims 5 and 30 have been rejected over Lemmeyer et al. in view of Marrujo and Van Hekken (U.S. Patent No. 5,297,851).

Application No. 09/871,199
Attorney Docket No. 20341-67618
Page 2

4. Status of Amendments. All amendments filed by appellant have been entered and considered by the examiner. Appellant has not filed an after final amendment.

5. Summary of Claimed Subject Matter.

The invention described in independent claim 6 is directed to a juvenile vehicle seat assembly 15 comprising a seat 13 including a seat bottom 24 and a seat back 14, a cantilevered armrest 10 projecting from the seat back 14, the cantilevered armrest 10 including an arm 11 and a support mount 12 appended to the arm 11 and coupled to the seat back 14 to support the arm 11 in a cantilevered position, a first fastener 88 coupled to the support mount 12 and the seat back 14 to maintain the arm 11 in the cantilevered position, the first fastener 88 being arranged to lie above the arm 11 to cause the arm 11 to lie between the first fastener 88 and the seat bottom 24, and wherein the support mount 12 includes an inner flange 72 coupled to the arm 11 and an outer flange 74 coupled to the arm 11 and positioned to lie in spaced-apart relation to the inner flange 72 to receive a ridge 16,18 of the seat back 11 in a U-shaped channel formed in the support mount 12 between the inner and outer flanges 72,74 and wherein the first fastener 88 extends through the inner and outer flanges 72,74. (See, for example, drawing Figs. 1-5 and the specification at page 4, lines 20 to 33).

The invention described in independent claim 11 is directed to a juvenile vehicle seat assembly 15 comprising a seat 13 including a seat bottom 24 and a seat back 14, a non-pivotable cantilevered armrest 10 projecting from the seat back, the cantilevered armrest 10 including an arm 11 having a free end 66, a top surface 62 and a support mount 12 appended to the arm 11 and coupled to the seat back 14 to support the arm 11 in a cantilevered position, and a first fastener 88 coupled to apertures 86 in the support mount 12 and apertures 87 in the seat back 14 to maintain the arm 11 in the cantilevered position, the first fastener 88 being arranged to lie above the top surface 62 of the arm 11 to cause the arm to lie between the first fastener 88 and the seat bottom 24 when the arm 11 is in the cantilevered position, wherein a flange 72,74 is formed to include a lower wing 76,78 extending below the arm 11 and toward the seat bottom 24 and a second fastener is 89 coupled to the lower wing 76,78. (See, for example, drawing Figs. 1-5 and the specification at page 4, lines 27 to page 5, line 7).

The invention described in independent claim 12 is directed to a juvenile vehicle seat assembly 15 comprising a seat 13 including a seat bottom 24 and a seat back 14, a non-pivotable cantilevered armrest 10 projecting from the seat back, the cantilevered armrest 10 including an

Application No. 09/871,199
Attorney Docket No. 20341-67618
Page 3

arm 11 having a free end 66, a top surface 62 and a support mount 12 appended to the arm 11 and coupled to the seat back 14 to support the arm 11 in a cantilevered position, and a first fastener 88 coupled to apertures 86 in the support mount 12 and apertures 87 in the seat back 14 to maintain the arm 11 in the cantilevered position, the first fastener 88 being arranged to lie above the top surface 62 of the arm 11 to cause the arm 11 to lie between the first fastener 88 and the seat bottom 24 when the arm 11 is in the cantilevered position, wherein an upper wing 75,77 is formed to include a fastener aperture 86, a ridge 16,18 of the seat back 14 positioned to lie adjacent to the upper wing 75,77 is formed to include a fastener aperture 87, and the first fastener 88 is arranged to extend through the fastener apertures 87 formed in the ridge 16,18 of the seat back 14 and the upper wing 75,77 of the flange 72,74 of the support mount 12. (See, for example, drawing Figs. 1-5 and the specification at page 4, lines 27 to page 5, line 7).

The invention described in independent claim 13 is directed to a juvenile vehicle seat assembly 15 comprising a seat 13 including a seat bottom 24 and a seat back 14, a cantilevered armrest 10 projecting from the seat back, the cantilevered armrest 10 including an arm 11 having a free end 66, a top surface 62 and a support mount 12 appended to the arm 11 and coupled to the seat back 14 to support the arm 11 in a cantilevered position, and a first fastener 88 coupled to the support mount 12 and the seat back 14 to maintain the arm 11 in the cantilevered position, the first fastener 88 being arranged to lie above the top surface 62 of the arm 11 to cause the arm 11 to lie between the first fastener 88 and the seat bottom 24 when the arm 11 is in the cantilevered position, and wherein the cantilevered armrest 10 further includes a load support panel 67 fixed to the cantilevered armrest 10 to lie in a fixed position relative to the arm 11 and the support mount 12 and to engage a ridge 16,18 of the seat back 14 to block pivotable movement of the cantilevered armrest 10 toward the seat bottom 24 about a pivot axis established by the first fastener 88. (See, for example, drawing Figs. 1-5 and the specification at page 4, lines 20 to 33).

The invention described in independent claim 25 is directed to a juvenile vehicle seat assembly 15 comprising a seat 13 including a seat bottom 24 and a seat back 14 having a side edge 16 facing forwardly toward the seat bottom 24, a cantilevered armrest 10 including a free end 66, a top surface 62 and a support mount 12 formed to include a rearwardly facing U-shaped channel 70 receiving the forwardly facing side edge 16 of the seat back 14 therein and an arm 11 appended to the support mount 12, and means for fastening the support mount 12 to the seat back

Application No. 09/871,199
Attorney Docket No. 20341-67618
Page 4

14 above and below the arm 11 and on a side of the side edge 16 to support the arm 11 in a cantilevered position to stabilize the arm 11 against movement. (See, for example, drawing Figs. 1-5 and the specification at page 4, lines 20 to 33).

The invention described in independent claim 27 is directed to a juvenile vehicle seat assembly 15 comprising a seat 13 including a seat bottom 24 and a seat back 14, a non-pivotable cantilevered armrest 10 including an arm 11 having a free end 66, a top surface 62 and a support mount 12 appended to the arm 11, the support mount 12 including upper wings 75,77 rising above the top surface of the arm 11 and away from the seat bottom 24 and lower wings 76,78 extending below the top surface 62 of the arm 11 and toward the seat bottom 24, and a first fastener 88 coupled to the upper wings 75,77 and the seat back 14 and a second fastener 89 coupled to the lower wings 76,78 and the seat back 14. (See, for example, drawing Figs. 1-5 and the specification at page 7, lines 4 to 12).

6. Grounds of rejection to be reviewed on appeal.

Whether claims 6-9, 11-12, 25 and 27-29 are unpatentable over Lemmeyer et al. in view of Marrujo. Whether claims 11-12 and 27-29 are unpatentable over Markel. Whether claims 13, 14 and 26 are unpatentable over Lemmeyer et al. in view of Marrujo and Mitchell. Whether claims 4 and 31 are unpatentable over Lemmeyer et al. in view of Marrujo and Deloustal. Whether claims 5 and 30 are unpatentable over Lemmeyer et al. in view of Marrujo and Van Hekken .

7. Copy of the Claims.

A copy of the claims on appeal is attached to this brief in the Claims Appendix.

8. Argument.

The rejection of claims 6-9, 11-12, 25 and 27-29 over Lemmeyer et al. (U.S. Patent No. 6,478,372) in view of Marrujo (U.S. Patent No. D 254,889).

Lemmeyer et al. discloses a seat and a cantilevered armrest wherein the armrest is supported by pins and abutting shelves.

Marrujo discloses a design for a leg for an aircraft seat.

In the office action it is urged that "Lemmeyer et al. disclose a seat assembly that is basically the same as that recited in claims 6-9, 11, 12, 25 and 27-29 except that the support

Application No. 09/871,199
Attorney Docket No. 20341-67618
Page 5

mount lacks upper wings, as recited in the claims.” The office action then describes Marrujo’s aircraft leg and concludes that

[i]t would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the seat assembly of Lemmeyer et al. such that each flange of the support mount is formed to include upper wings rising above the top surface of the arm and away from the seat bottom, the upper wings include a fastener... such as the support mounted [sic] disclosed in Marrujo. (Office action page 3).

Claim 6

Claim 6 is directed to a juvenile vehicle seat assembly comprising a seat including a seat bottom and a seat back, a cantilevered armrest projecting from the seat back, the cantilevered armrest including an arm and a support mount appended to the arm and coupled to the seat back to support the arm in a cantilevered position, a first fastener coupled to the support mount and the seat back to maintain the arm in the cantilevered position, the first fastener being arranged to lie above the arm to cause the arm to lie between the first fastener and the seat bottom, and wherein the support mount includes an inner flange coupled to the arm and an outer flange coupled to the arm and positioned to lie in spaced-apart relation to the inner flange to receive a ridge of the seat back in a U-shaped channel formed in the support mount between the inner and outer flanges and wherein the first fastener extends through the inner and outer flanges.

If the proposed modification of the prior art would change the principle of operation of the prior art invention then the teachings of the references are not sufficient to render the claims *prima facie* obvious.¹

The rejection of claims 6-9, 11, 12, 25 and 27-29 over Lemmeyer et al. in view of Marrujo argues, in effect, it would have been obvious to replace cantilevered arm 16 in Lemmeyer et al. with the leg member of Fig. 1 of Marrujo (see Diagram A at page 9 of the final office action). Lemmeyer et al. describes the arm attachment to the seat by stating

[t]he tongue 110 has a height that is substantially equal to the height of the groove 101 in the cantilever armrest 16. When the groove 101 is channeled over the tongue 110, the top and bottom surfaces 104, 106, respectively, of the **armrest 16 abut upper and lower shelves 112, 114, respectively**, surrounding the tongue 110.... Once the tongue-in-groove attachment has been made

¹ In re Ratti, 270 F.2d 810, 123 USPQ 349 (CCPA 1959).

Application No. 09/871,199
Attorney Docket No. 20341-67618
Page 6

between the grooves 101 in the cantilever armrests 16 and the respective recessed tongues 102 of the backrest 12, fasteners, such as bolts, rivets, or other conventional fasteners, are channeled through holes 120 in the cantilever armrests 16 and corresponding holes 122 in the recessed tongues 110. (Column 5, line 65 - column 6, line 15. Emphasis added.)

If Marrujo's leg were attached to Lemmeyer et al.'s tongue 110 it would not fit so that the armrest abuts upper and lower shelves 112, 114 in the manner taught by Lemmeyer et al. Note Lemmeyer et al.'s armrest (Fig. 1B) fits so that the top flat arm surface 104 abuts flat shelf 112 and bottom flat arm surface 106 abuts flat shelf 114. Marrujo's leg does not have flat surfaces that can abut the flat shelves and continue outward to provide top and bottom arm surfaces. The abutment of the flat arm surfaces and flat shelf surfaces would be removed in the modification suggested in the office action and, thus, the form of the attachment of the arm to the seat would be changed. The flat abutment surfaces clearly adds support to the arm and removal of these flat abutting surfaces would weaken the arm support, e.g., a less rigid arm support would result. For at least the above reasons, the proposed modification of the prior art would change the principle of operation of the prior art invention and the references are not sufficient to render the claims *prima facie* obvious.

Notwithstanding the office action suggestion to the contrary, there is no teaching or suggestion in the prior art that would have motivated one of ordinary skill in the art to replace Lemmeyer et al.'s arm 16 with Marrujo's leg. Marrujo's leg provides no mechanical or other advantage over Lemmeyer et al.'s arm 16. For at least this reason, it would not have been obvious to replace Lemmeyer et al.'s arm with the leg member of Marrujo. So why would anyone replace Lemmeyer et al.'s arm 16 with Marrujo's leg? Improper hindsight is the only reason that comes to mind.²

An additional point, Lemmeyer et al.'s arm 16 is designed to extend from the slot formed by shelves 112, 114 and provide arm support at the same height as shelf 112. Marrujo's leg is not designed to provide arm support and would not provide proper arm support, e.g., it would provide support at a lower level than the height of shelf 112 because the flanges at the end of the leg must fit between shelves 112 and 114 and the leg is recessed from the corresponding flange

² The court has repeatedly cautioned against employing hindsight by using the appellant's disclosure as a blueprint to reconstruct the claimed invention from the isolated teachings of the prior art. See, e.g., *Grain Processing Corp. v. American Maize-Products Co.*, 840 F.2d 902, 907, 5 USPQ2d 1788, 1792 (Fed. Cir. 1988).

Application No. 09/871,199
Attorney Docket No. 20341-67618
Page 7

surfaces. Thus, use of Marrujo's leg in place of Lemmeyer et al.'s arm would provide an undesirable change to the Lemmeyer et al. structure.

Accordingly, there is no proper teaching or suggestion for the alleged combination of Lemmeyer et al. and Marrujo and without a proper teaching or suggestion in the prior art there is no prima facie case of obviousness.³

Claims 7-8

Claim 7 is dependent from claim 6 and further requires each flange is formed to include an upper wing rising above the arm and away from the seat bottom and the first fastener is coupled to the upper wing of each flange. This is not taught or suggested in Lemmeyer et al. whose fasteners are not above the arm. Locating the fastener above the arm provides a mechanical advantage. Marrujo teaches side by side fasteners supporting a vertically extending member, not fasteners for a horizontal member with a fastener above the horizontal member. For at least this reason, Lemmeyer et al. and Marrujo do not combine to arrive at the subject matter of claim 7. Claim 8 avoids the rejection for the same reasons as noted above with respect to claims 6 and 7.

It is noted that the office action urges "Applicants have not disclosed that having the upper and lower wings on the flanges solves any stated problem or is for any particular purpose." (Office action at page 3, last four lines.) This ignores what one of ordinary skill in the art would understand as the purpose of the claimed flanges. Applicant's disclosure clearly shows (in the drawings) and describes (in the specification) the use of the flanges. The above-quoted statement is not a proper basis for disregarding the purpose and use of the wings.

Claim 9

Claim 9 is dependent from claim 7 and further requires each flange is formed to include a lower wing below the arm and toward the seat bottom and a second fastener is coupled to the lower wing of each flange. This is not taught or suggested in Lemmeyer et al. whose fasteners are not above and below the arm. Locating the fastener above and below the arm provides a mechanical advantage. Marrujo teaches side by side fasteners supporting a vertically extending member, not fasteners for a horizontal member with a fastener above the horizontal member and

³ Prima facie obviousness based on a combination of references requires that the prior art provide "a reason, suggestion, or motivation to lead an inventor to combine those references." *Pro-Mold and Tool Co. v. Great Lakes Plastics Inc.*, 75 F.3d 1568, 1573, 37 USPQ2d 1626, 1629 Fed. Cir 1996).

Application No. 09/871,199
Attorney Docket No. 20341-67618
Page 8

a fastener below the horizontal member as recited in claim 9. For at least this reason, Lemmeyer et al. and Marrujo do not combine to arrive at the subject matter of claim 9.

Claim 11

Claim 11 requires a fastener coupled to the support mount and seat back with the fastener above the top surface of the arm. This provides a mechanical advantage over Lemmeyer et al. whose fasteners are not above the arm. Locating the fastener above the arm provides a mechanical advantage. Marrujo's side by side fasteners support a vertically extending member, they are not fasteners for a horizontal member and are not above a horizontal arm as recited in claim 11. For at least this reason, Lemmeyer et al. and Marrujo do not combine to arrive at the subject matter of claim 11. For the same reasons as noted above with respect to claim 6 it would not have been obvious to replace Lemmeyer et al.'s arm with the leg member of Marrujo.

Claim 12

Claim 12 requires a fastener coupled to apertures in the support mount and apertures in the seat back with the fastener above the top surface of the arm. This provides a mechanical advantage over Lemmeyer et al. whose fasteners are not above the arm. Locating the fastener above the arm provides a mechanical advantage. Marrujo's side by side fasteners support a vertically extending member, they are not fasteners for a horizontal member and are not above a horizontal arm as recited in claim 12. For at least this reason, Lemmeyer et al. and Marrujo do not combine to arrive at the subject matter of claim 12. For the same reasons as noted above with respect to claim 6 it would not have been obvious to replace Lemmeyer et al.'s arm with the leg member of Marrujo.

Claim 25

Claim 25 is in 35 U.S.C. 112, sixth paragraph, format and recites structure disclosed in the specification for fastening the support mount to the seat back above and below the arm and on a side of the side edge to support the arm in a cantilevered position to stabilize the arm against movement. As stated in claim 25 fastening above and below the arm emphasizes stabilizing the arm against movement. Fastening above and below the arm is not taught or suggested in Lemmeyer et al. whose fasteners are within the arm, not above and below the arm. And Marrujo teaches side by side fasteners supporting a vertically extending member, not means for fastening a horizontal member above the horizontal member and below the horizontal member as recited in claim 25. For at least this reason, Lemmeyer et al. and Marrujo do not combine to arrive at the

Application No. 09/871,199
Attorney Docket No. 20341-67618
Page 9

subject matter of claim 25. For the same reasons as noted above with respect to claim 6 it would not have been obvious to replace Lemmeyer et al.'s arm with the leg member of Marrujo.

Claim 27-29

Claim 27 is directed to a juvenile vehicle seat assembly comprising an arm including upper wings rising above the top surface of the arm and away from the seat bottom and lower wings extending below the top surface of the arm and toward the seat bottom, and a first fastener coupled to the upper wings and the seat back and a second fastener coupled to the lower wings and the seat back. Fastening above and below the arm is not taught or suggested in Lemmeyer et al. whose fasteners are within the arm, not above and below the arm. And Marrujo teaches side by side fasteners supporting a vertically extending member, not means for fastening a horizontal member above the horizontal member and below the horizontal member as recited in claim 27. For at least this reason, Lemmeyer et al. and Marrujo do not combine to arrive at the subject matter of claim 27. For the same reasons as noted above with respect to claim 6 it would not have been obvious to replace Lemmeyer et al.'s arm with the leg member of Marrujo.

The rejection of claims 11-12 and 27-29 over Markel (U.S. Patent No. 5,316,373).

Claims 11-12 and 27-29

Markel discloses improvements to a pivotable armrest.

Claims 11-12 and 27-29 are directed to a non-pivotable armrest. The office action acknowledges that Markle has a pivotable armrest and then concludes that

[i]t would have been obvious to one having ordinary skill in the art to omit the pivoting elements of the armrest to simplify the armrest's assembly, since it has been held to be within the general skill of a worker in the art to eliminate an element or its function as a matter of obvious engineering choice. (Office action pages 4 and 5).

Markle is directed to an improvement in pivotal armrests. Markle states that

[t]he arm rest of this invention obviates the need to incorporate the stops into the chair frame. The arm rest includes a control housing positioned in the chair frame which accepts the connecting rod and houses the rod during rotational movement of the arm. The control housing includes a stop pin housed in a channel oriented transversely to and in communication with a central channel which houses the guide pin attached to the connecting rod. The

Application No. 09/871,199
Attorney Docket No. 20341-67618
Page 10

orientation of the interconnecting channels allows the stop pin to limit rotational movement of the arm, and also allows the arm to be detached from the control housing as necessary. (Summary of the Invention at column 1, lines 13-23).

Thus, Markle is providing an improved pivotal armrest which omits stops used in previous pivotal armrest. Markle's pivotal armrest is also removable. Markle states that

[t]o remove arm support 12 for any reason, seat frame 8 must be inverted from the position of FIGS. 1 and 2 into the position shown in FIG. 3. This allows stop pin to return to groove 49 by gravity. This removes the blocking member from slots 39, 40 and allows arm support 12 to be **rotated** until pin 32 is aligned with slots 38-41 for withdrawal. (Column 2, lines 55-61. Emphasis added).

Thus, it would not have been obvious to prevent the pivotal (e.g., rotational) movement in Markel since this would defeat the whole purpose of Markel's disclosed armrest, i.e., to improve on prior pivotal armrests and to provide for removability of the armrest by pivoting. As noted above, if the proposed modification of the prior art would change the principle of operation of the prior art invention then the teachings of the references are not sufficient to render the claims *prima facie* obvious.

For the above reasons, it would not have been obvious to remove the pivotal function from Markle.

The rejection of claims 13, 14 and 26 over Lemmeyer et al. in view of Marrujo and Mitchell
(U.S. Patent No. 207,764).

Mitchell discloses an armrest having a "shoulder of the arm, resting against the front face of the post, compensates for any weakness caused by cutting away to receive the arm." (Column 2, lines 34-37). See especially Fig. 3.

Claims 13, 14 and 26

Claim 13 is directed to a juvenile vehicle seat assembly comprising a cantilevered armrest projecting from the seat back and a first fastener coupled to maintain the arm in the cantilevered position, the first fastener being arranged to lie above the top surface of the arm to cause the arm to lie between the first fastener and the seat bottom when the arm is in the cantilevered position, and wherein the cantilevered armrest further includes a load support panel fixed to the cantilevered armrest to lie in a fixed position relative to the arm and the support

Application No. 09/871,199
Attorney Docket No. 20341-67618
Page 11

mount and to engage a ridge of the seat back to block pivotable movement of the cantilevered armrest toward the seat bottom about a pivot axis established by the first fastener. Claim 14 is dependent on claim 13. Claim 26 is dependent on claim 25 and requires a load support panel.

The office action urges that

[i]t would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the seat assembly of Lemmeyer et al. such that the armrest includes a load support panel fixed to the cantilevered armrest to lie in a fixed position relative to the arm and the support mount and to engage the ridge of the seat back to block pivotable movement of the cantilevered armrest toward the seat bottom...such as the seat assembly disclosed in Mitchell. (Office action pages 5 and 6).

The rejection of claims 13, 14 and 26 is improper for at least the reasons expressed above regarding the improper combination of Lemmeyer et al. and Marrujo. In addition the office action suggestion that the armrest (presumably the modified armrest in Diagram A at page 9 of the office action) include a load support panel as taught by Mitchell requires that tongue 110 in Diagram A be shaped to include a notch as shown in Fig. 3 of Mitchell so that a portion of Marrujo's leg can act like the shoulder in Mitchell's arm J. It is not evident that there is any portion of Marrujo's leg that could function like the shoulder in Mitchell's arm J even if the tongue 110 were notched as shown by Mitchell. There is no teaching or suggestion in any of these references that would have motivated one of ordinary skill in the art to make a notch (like Mitchell's notch) in the tongue 110 and even if there were such teaching or suggestion (and such is not conceded) it still would not arrive at the claimed invention since there is no load support panel in the modified Lemmeyer et al./Marrujo armrest. That is, even if a notch were provided there is no "load support panel fixed to the cantilevered armrest to lie in a fixed position relative to the arm and the support mount and to engage a ridge of the seat back to block pivotable movement of the cantilevered armrest toward the seat bottom about a pivot axis established by the first fastener" (claim 13) or the "load support panel arranged to lie in a fixed position relative to the arm and the support mount and to abut the forwardly facing side edge of the seat back to block pivotable movement of the cantilevered armrest toward the seat bottom about a pivot axis established by the first fastener" (claim 26) in the modified Lemmeyer et al./Marrujo armrest.

For all of these reasons, the rejection of claims 13, 14 and 26 is improper.

Application No. 09/871,199
Attorney Docket No. 20341-67618
Page 12

The rejection of claims 4 and 31 over Lemmeyer et al. in view of Marrujo and Deloustal (U.S. Patent No. 4,274,674).

Claims 4 and 31

Deloustal discloses a child safety seat with a hinged connection at 3 and a threaded rod 12.

Claims 4 and 31 are directed to an embodiment wherein the first fastener has a first length and the second fastener has a second length longer than the first length.. The office action urges that Deloustal discloses a first fastener at axis 3 with a first length and a second fastener 12 with a second longer length and then concludes that

[i]t would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the seat assembly of Lemmeyer et al. such that the second fastener has a second length longer than the first length of the first fastener, such as the seat assembly of Deloustal. One have been motivated to make such a modification in view of the suggestion in Deloustal that the longer second fastener provides connection to a tab for attaching the seat assembly to the seat belt apparatus of a vehicle seat. (Office action page 6).

The rejection of claims 4 and 31 is improper for at least the reasons expressed above regarding the improper combination of Lemmeyer et al. and Marrujo. In addition, the office action suggestion that Deloustal provides motivation to modify the combination of Lemmeyer et al. and Marrujo is unreasonable. Nothing in Deloustal discloses the alleged fasteners are of different length. The structural relationship and importance of the different fastener lengths of appellant's claims 4 and 31 is described at, for example, page 6, lines 19-25 of appellant's disclosure. The relative lengths of Deloustal's 3 and 12 is not evident and there is nothing that indicates that the lengths of 3 and 12 are different. Figs. 3-5 appear to show one end of 3 protrudes more than the end of 12, but this is not conclusive of their relative lengths nor is it indicative that the relative lengths are of any importance. The office action suggestion that motivation to modify the Lemmeyer et al./Marrujo combination is found in Deloustal's longer second fastener provides connection to a tab for attaching the seat assembly to the seat belt apparatus of a vehicle seat does not provide motivation for modification of the Lemmeyer et al./Marrujo combination. That is, the first fastener in the Lemmeyer et al./Marrujo combination maintains the arm in a cantilevered position and a second fastener is coupled to the lower wing.

Application No. 09/871,199
Attorney Docket No. 20341-67618
Page 13

There is nothing in Deloustal that would have motivated one of ordinary skill to modify these fasteners to provide the relative lengths as recited in claims 4 and 31.

For all of these reasons, the rejection of claims 4 and 31 is improper.

The rejection of claims 5 and 30 over Lemmeyer et al. in view of Marrujo and Van Hekken (U.S. Patent No. 5,297,851).

Claims 5 and 30

The rejection of claims 5 and 30 is improper for at least the reasons expressed above regarding the improper combination of Lemmeyer et al. and Marrujo.

Conclusion of Argument

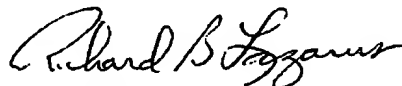
From the above, it is readily apparent that Lemmeyer et al., Marrujo, Markel, Mitchell Deloustal and Van Hekken do not teach or suggest the subject matter of claims 4-9, 11-14 and 25-31 and the final rejection is in error. The final rejection provides conclusions without proper reasons explaining the conclusions. Rather, the final rejection action just summarily rejects all of the claims without adequate explanation. For the foregoing reasons, the appellant, respectfully, requests that the rejection of claims 4-9, 11-14 and 25-31 be reversed and the application with claims 4-9, 11-14 and 25-31 be allowed.

It is respectfully requested that, if necessary to effect a timely response, this paper be considered as a Petition for an Extension of Time sufficient to effect a timely response and shortages in other fees, be charged, or any overpayment in fees be credited, to the Account of Barnes & Thornburg, Deposit Account No. 10-0435 (20341-67618).

The appeal brief fee has been paid with appellant's previously filed appeal brief.

Respectfully submitted,

BARNES & THORNBURG LLP



Richard B. Lazarus
Registration No. 48,215
Tel. No. (202) 289-1313

DCDS01-100856v1

Application No. 09/871,199
Attorney Docket No. 20341-67618
Page 14

Claims Appendix

1-3. (Cancelled)

4. The assembly of claim 11, wherein the first fastener has a first length and the second fastener has a second length longer than the first length.

5. The assembly of claim 11, wherein each fastener includes a barrel having a first end and an opposite threaded opened end, an enlarged head coupled to the first end, and a screw threaded to fit in and mate with the threaded opened end of the barrel to couple the support mount to the seat back.

6. A juvenile vehicle seat assembly comprising
a seat including a seat bottom and a seat back,
a cantilevered armrest projecting from the seat back, the cantilevered armrest including an arm and a support mount appended to the arm and coupled to the seat back to support the arm in a cantilevered position,

a first fastener coupled to the support mount and the seat back to maintain the arm in the cantilevered position, the first fastener being arranged to lie above the arm to cause the arm to lie between the first fastener and the seat bottom, and

wherein the support mount includes an inner flange coupled to the arm and an outer flange coupled to the arm and positioned to lie in spaced-apart relation to the inner flange to receive a ridge of the seat back in a U-shaped channel formed in the support mount between the inner and outer flanges and wherein the first fastener extends through the inner and outer flanges.

7. The assembly of claim 6, wherein each flange is formed to include an upper wing rising above the arm and away from the seat bottom and the first fastener is coupled to the upper wing of each flange.

8. The assembly of claim 7, wherein the ridge of the seat back received in the U-shaped channel is formed to include a fastener aperture, each upper wing is formed to include a fastener aperture, and the first fastener is arranged to extend through the fastener apertures formed in the ridge of the seat back and each upper wing.

9. The assembly of claim 7, wherein each flange is formed to include a lower wing extending below the arm and toward the seat bottom and the second fastener is coupled to the lower wing of each flange.

Application No. 09/871,199
Attorney Docket No. 20341-67618
Page 15

10. (Cancelled)

11. A juvenile vehicle seat assembly comprising

a seat including a seat bottom and a seat back,

a non-pivotable cantilevered armrest projecting from the seat back, the cantilevered armrest including an arm having a free end, a top surface and a support mount appended to the arm and coupled to the seat back to support the arm in a cantilevered position, and

a first fastener coupled to apertures in the support mount and apertures in the seat back to maintain the arm in the cantilevered position, the first fastener being arranged to lie above the top surface of the arm to cause the arm to lie between the first fastener and the seat bottom when the arm is in the cantilevered position,

wherein a flange is formed to include a lower wing extending below the arm and toward the seat bottom and a second fastener is coupled to the lower wing.

12. A juvenile vehicle seat assembly comprising

a seat including a seat bottom and a seat back,

a non-pivotable cantilevered armrest projecting from the seat back, the cantilevered armrest including an arm having a free end, a top surface and a support mount appended to the arm and coupled to the seat back to support the arm in a cantilevered position, and

a first fastener coupled to apertures in the support mount and apertures in the seat back to maintain the arm in the cantilevered position, the first fastener being arranged to lie above the top surface of the arm to cause the arm to lie between the first fastener and the seat bottom when the arm is in the cantilevered position,

wherein an upper wing is formed to include a fastener aperture, a ridge of the seat back positioned to lie adjacent to the upper wing is formed to include a fastener aperture, and the first fastener is arranged to extend through the fastener apertures formed in the ridge of the seat back and the upper wing of the flange of the support mount.

Application No. 09/871,199
Attorney Docket No. 20341-67618
Page 16

13. A juvenile vehicle seat assembly comprising
a seat including a seat bottom and a seat back,
a cantilevered armrest projecting from the seat back, the cantilevered armrest including an arm having a free end, a top surface and a support mount appended to the arm and coupled to the seat back to support the arm in a cantilevered position, and

a first fastener coupled to the support mount and the seat back to maintain the arm in the cantilevered position, the first fastener being arranged to lie above the top surface of the arm to cause the arm to lie between the first fastener and the seat bottom when the arm is in the cantilevered position, and wherein the cantilevered armrest further includes a load support panel fixed to the cantilevered armrest to lie in a fixed position relative to the arm and the support mount and to engage a ridge of the seat back to block pivotable movement of the cantilevered armrest toward the seat bottom about a pivot axis established by the first fastener.

14. The assembly of claim 13, wherein the support mount includes an inner flange coupled to the arm and an outer flange coupled to the arm and positioned to lie in spaced-apart relation to the inner flange to receive a ridge of the seat back in a U-shaped channel formed in the support mount between the inner and outer flanges and the load support panel includes a lower edge positioned to engage the ridge of the seat back and lie in a position between the inner and outer flanges of the support mount.

15-24. (Allowed).

25. A juvenile vehicle seat assembly comprising
a seat including a seat bottom and a seat back having a side edge facing forwardly toward the seat bottom,

a cantilevered armrest including a free end, a top surface and a support mount formed to include a rearwardly facing U-shaped channel receiving the forwardly facing side edge of the seat back therein and an arm appended to the support mount, and

means for fastening the support mount to the seat back above and below the arm and on a side of the side edge to support the arm in a cantilevered position to stabilize the arm against movement.

Application No. 09/871,199
Attorney Docket No. 20341-67618
Page 17

26. The assembly of claim 25, wherein the cantilevered armrest further includes a load support panel arranged to lie in a fixed position relative to the arm and the support mount and to abut the forwardly facing side edge of the seat back to block pivotable movement of the cantilevered armrest toward the seat bottom about a pivot axis established by the first fastener.

27. A juvenile vehicle seat assembly comprising
a seat including a seat bottom and a seat back,
a non-pivotable cantilevered armrest including an arm having a free end, a top surface and a support mount appended to the arm, the support mount including upper wings rising above the top surface of the arm and away from the seat bottom and lower wings extending below the top surface of the arm and toward the seat bottom, and
a first fastener coupled to the upper wings and the seat back and a second fastener coupled to the lower wings and the seat back.

28. The assembly of claim 27, wherein each upper wing is formed to include a fastener aperture, the seat back is formed to include a fastener aperture, and the first fastener is arranged to extend through fastener apertures formed in the upper wings and seat back.

29. The assembly of claim 27, wherein each lower wing is formed to include a fastener aperture, the seat back is formed to include a second fastener aperture, and the second fastener is arranged to extend through the fastener aperture formed in the lower wings and the second fastener aperture formed in the seat back.

30. The assembly of claim 27, wherein each fastener includes a barrel having a first end and an opposite threaded opened end, an enlarged head coupled to the first end, and a screw threaded to fit in and mate with the threaded opened end of the barrel to couple the support mount to the seat back.

31. The assembly of claim 27, wherein the first fastener has a first length and the second fastener has a second length longer than the first length.

Application No. 09/871,199
Attorney Docket No. 20341-67618
Page 18

Evidence appendix

None.

Application No. 09/871,199
Attorney Docket No. 20341-67618
Page 19

Related proceedings appendix

None.